

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND OF NATURAL RESOURCES**

DATE: FRIDAY, MAY 11, 2012
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson William Aila called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

William Aila
David Goode
Dr. Sam Gon

Ron Agor
Jerry Edlao
Rob Pacheco

STAFF

Russell Tsuji/LAND
Nelson Ayers/DOFAW
Randolph Lee/SHPD
Francis Oishi/DAR
Bill Andrews/DOBOR

Paul Conry/DOFAW
Moana Rowland/DOFAW
Sam Lemmo/OCCL
Carty Chang/ENG

OTHER

Colin Lau, Deputy Attorney General
Bill Wynhoff, Deputy Attorney General
Paul Alston, D-11
Kelly Laporte, D-11
Dr. Calvin Kam, D-11
Kaleo Paik, C-4
Susan Cordell, C-2
Guy Archer, C-5
Scott Meidell, C-5
Jay Feldman, C-5
Jim Quinn, C-7
Mr. Lin, L-2

Peter Yamashita, D-9
Mike Tom, D-8
Jaymark Komer, D-11
Carol Chun, D-11
Ross Smith: M-1, M-2
Melissa Dean, C-2
Tom Pierce, C-5
Don Young, C-5
Michael Gibson, C-5
John Brown, C-5
Jim Pepps, C-7

{NOTE: Language for deletion is [bracketed], new/added is underlined.}

Item A-1 November 10, 2011 Amended Minutes

Board member Pacheco recused from item A-1.

Approved as submitted (Gon, Goode)

Item A-2 April 20, 2012 Minutes

Board members Gon and Goode recused from item A-2.

Approved as submitted (Agor, Edlao)

Item D-9 Consent to Stock Purchase Agreement and Assignment and Assumption Agreement Regarding General Lease No. S- 4095 between Olomana Golf Links, Inc. and Hawaii OGL LLC; Revise the Monthly Rent for Revocable Permit No. 7517 for Golf Course Nursery Operations, Waimanalo, Koolaupoko, Oahu, Tax Map Key:(1) 4-1-013:010 & 012.

Russell Tsuji representing Land Division conveyed some background on item D-9 that the State would be sharing the assignment premium and requested increasing the revocable permit rent.

Member Gon asked whether the representative from Olomana Golf Links was ok with staff's conditions and recommendations. Peter Yamashita replied in agreement with staff's submittal.

Unanimously approved as submitted (Goode, Gon)

Item D-8 Request Approval of Plans for Construction of New Residence, Patricia Moore, Diamond Head View Lots Unit Two, Increment One, Lot 42, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:050.

Written testimonies from Clark Hatch, Dr. Calvin Kam, Paul Alston, Kelly LaPorte, Michael Tom, Florence Lum, Shirley Kam, Lori Komer, Jaymark Komer and Herbert Klein were distributed to the Board members.

Mr. Tsuji indicated that staff was advised by Mrs. Moore's counsel to defer to May 25, 2012 while the parties try to resolve this issue.

Mike Tom representing Patricia Moore testified in agreement.

Deferred (Goode, Gon)

By stipulation of the parties, the matter was deferred until the next meeting on May 25, 2012.

Item D-11 Request Approval of Plans for Construction of New Residence, Carol A Chun Trust, Diamond Head View Lots Unit Two, Increment One, Lot 43A, Honolulu, Oahu, Hawaii, Tax Map Key: (1) 3-1-048:051 and

Authorize the Chairperson to Provide the City and County of Honolulu with an Updated List of Fort Ruger and Diamond Head View Lots whose Building Height Restrictions Expired.

Written testimonies from Clark Hatch, Dr. Calvin Kam, Paul Alston, Kelly LaPorte, Michael Tom, Florence Lum, Shirley Kam, Lori Komer, Jaymark Komer and Herbert Klein were distributed to the Board members.

Mr. Tsuji related some background on item D-11 detailing issues with the view plain. Paul Alston represents Mr. Klein and Mr. Komer, homeowners behind homes owned by Ms. Chun and Ms. Moore and this item is for Ms. Chun. The old structure was demoed and new structures are being constructed. In 1957, it was decided by the Commission on Public Lands to encourage homesteading in this area subdividing individual lots. There were 3 sets of auctions with 3 different versions of the deed. There was a height restriction of 15 feet that expired in 15 years. In 1961 and 1970, there were perpetual easements with different language. Chun and Moore were part of the last set of options which has a perpetual restriction in the deed - a height restriction of 15 feet and the deed language are identical for both where the structure can not be measured no higher than 15 feet from the highest improved finished grade at the building line. Some homes are identical that say no higher than 15 feet measured at the highest approved finished grade at the building. Staff researched the term where "building line" means "set back line." Basically no higher than 15 feet measured from the highest approved finished grade as approved by the regulatory agency (county) at the building line. All these deeds with maps are attached to the submittal which was reviewed by counsel and have set backs. Building plans were presented to staff and the question was whether it was within the height restriction - no higher than 15 feet measured at the highest approved finished grade at the building line or set back line and that is where the dispute is. Staff's recommendation is to approve because the Chun plans indicated that it was within that deed restriction. The neighboring homeowners disagreed citing the Noh case which is the current home of Mr. Klein. In that case the Board of Land and Natural Resources (BLNR) ordered the Nohs to tear down a third floor construction because it exceeded the height restriction. It was an existing structure where they wanted to add a third floor and was clearly above the height restriction. That one says instead of measure from the building line it says measure from the building and the building is encroaching inside the rear set back line because these are homes on a mountain slope where the lots are 10-15 square feet, but it's hard to build on a slope. What hasn't been presented is what happens in the context and was never decided on in any of the cases that we read, but staff discussed what would happen to the Kleins in the Noh house which was to demo the property and rebuild which is a moot question because their property is at the rear set back line. For those deeds with "building" it may have a large lot and if the original construction was built not all the way back to the set back line, but instead to the front and they demoed and their deed said at building do you measure the original 15 feet from that original structure or is a subsequent owner allowed to reconstruct and allowed to go all the way back up to the set back line. That is not presented here today and there is not a case to date, but that is what the deed says.

Member Pacheco asked that you made that distinction between the previous Noh case at a point excavated deep into the lot. Mr. Tsuji explained there was an existing house where the owner built a third floor, after investigating they exceeded the 15 feet height restriction and the BLNR ordered the removal, it went to court and the order for removal of the third floor was upheld. That house was purchased by Mr. Klein which is at the rear of Mrs. Moore and Mrs. Chun's properties.

Paul Alston testified that he represents Jaymark and Lori Komer and Herb and Marsha Klein who own lots up slope behind the Chun house. The Kleins house was shaped by the litigation in which the Board's predecessors zealously enforced the rules about height limits. Yet, staff finds themselves in this situation with the enforcement of the rules. The deeds say there is height restrictions measured from the highest approved finished grade and the Board has the right to review the plans and require them to be modified to minimize the impacts on the neighbors' views – over and under the house looking up at Diamond Head. It means protecting the views of Diamond Head for the public and avoids houses that loom over the street completely blocking the public view. 1. What is the highest approved finished grade? 2. Are they staying within 15 feet of that finished grade? 3. Is the Board exercising its duty to minimize the interference on views? There is nothing on record here that the Board approved a finished grade that they are using for the measurement of the height of the Chun house. In Exhibit E of his written testimony he pointed out in the photos what he calls the watch tower and he described as being 9 feet above the finished grade of the home. It shouldn't be an artificial starting point so that they can build a bigger house.

Member Agor asked when interpreting the location of that highest grade building line as defined as the set back line then the argument is, is it the building line or the building. Mr. Alston said not necessarily that the set back line runs from boundary to boundary which goes along the back and side of the lot and the plans reflect the finished grade in respect to the home it is 9 feet down from that point. What he is suggesting is all they've done is create this artificial elevated area and called that the highest approved finished grade. The Board hasn't approved it and shouldn't. You should say no to them. When we talk about approved finished grade we mean something at the set back line that relates to the house.

Member Agor asked what he is suggesting is they are selecting as their highest grade is the build up and Mr. Alston said no, if you were to look at the house before any construction was done part of that slope was probably there, but he can't tell you how much, that he didn't know. He does know that the house they are building is 4-1/2 feet higher than the house it replaces even with the benefit of this watch tower point that they've picked that has nothing to do with the house or the set back line where the house is located.

Member Agor asked did they create the grade or the idea that is the highest finished grade. Mr. Alston said he couldn't tell whether they elevated it from what it was historically, but he could say they chose that point because it is as tall as it is and there is no indication with respect to the prior house which was 4-1/2 feet shorter than what they are building now that was chosen as the point.

Member Agor said in relation to that the City ordinance defines that the place where you pick for the highest point of the lot is buildable area which would affect that line. Mr. Alston reiterated that they excavated everywhere, but left this watch tower for the purpose of building a house 9 feet taller than what it should be and that the Board hasn't approved the finished grade for calculating the building height. It should be at the set back line in the area where the house is, but they don't want to build there because then they wouldn't be able to build this monster mansion. Under the deeds it says the Board has the right to both judge interference of views and require modification in design to lessen interference of views from neighboring lots. To date you've never done that and staff has never given you guidance on how to do that. Mr. Alston referred to Exhibit H of his written testimony looking at the last two photos from the street which he described obliterating views of Diamond Head and out of character with the neighborhood (not a Hawaiian sense of place). He asked to undertake the review and require the plans to be modified to minimize the impact to the neighbors' views. The Klein's home had zealous scrutiny done to their home and asked the same for the Chun home. He distributed the Komers' written testimonies to the Board.

Lori Komer testified from her written testimony having lived in the subdivision since the 1960s and that recent construction lost sight of the original intentions or tried to blur the obligations of living in their neighborhood. They are well aware of their neighbor's house placement and that this is all about the views. They have a petition signed by all the neighbors who are distressed and asked that their interests be acted upon. They require the DLNR to enforce the protective covenants, take immediate action in keeping your word and because it is the right thing to do.

Jaymark Komer testified from his written testimony that it is difficult to review one lot's plans when submitted by itself in an existing subdivision where it can be misinterpreted with the requirements underlying the land. Mr. Komer suggested architects submit a 360 degree video of the parcel as it sits in relationship to the neighboring parcels which would show them doing their job accurately and efficiently. He asked that the Board require changes to the current construction to restore the views, air circulation and privacy to the neighborhood.

Kelly Laporte representing Carol Chun testified referring to Mr. Alston's testimony regarding the Board approved the highest approved finished grade on Ms. Chun's lot. This Board is constituted to safeguard the public lands of the State of Hawaii, but these are not public lands and questioned the Board's authority with approving the finished grade on Ms. Chun's lot and that it is not in her deed. He referred to Exhibit 2 of staff's submittal that there are provisions for consent by the Chairman of the BLNR on page 4 of her deed that accessory buildings can be constructed with only prior written consent of the Chairman of the BLNR. This is a primary dwelling and not an accessory building. There is nothing in her deed requiring this Board provide consent to build her primary dwelling or approving the highest finished grade. Mr. Alston says the finished grade is artificial and referred to Exhibit 3 of the submittal which is the approved original residence and highest approved finished grade as approved by the DLNR in 1971. In 1976, the exact same finished grade never changed and what Mr. Alston suggested was you can never excavate any portion of your lot. The measurement is from the highest set back line which never changed, never altered and will never change the highest approved finished grade. With respect to the recommendation that this Board under take judging views in requiring Ms. Chun alter her construction, which is well underway, with plans approved by the DLNR

more than 2 years ago. The Board has never done this and to require it now, there are no procedures and there are no rules. Mr. Laporte presented a Power Point presentation with views outside the subdivision, from the street, the homes in front which don't have a height limit (25 feet), the Kleins and Komers houses and Ms. Chun's house is not the highest house. As for building the home with a Hawaiian sense of place, it's not legal and it's not in the deed. The majority of the homes on the highest level violate the 15 foot restriction including the Kleins' and the Komers' houses. There are neighboring homes that dwarf Ms. Chun's house. One of the Board members asked whether the flat line is the top of the house and Mr. Laporte confirmed that. Mr. Laporte displayed more photos, artist rendering of Ms. Chun's house, the new house under construction next door, views inside Ms. Chun's lot, the entryway, from her second floor, trees and homes that block Ms. Chun's view and that every home constructed will block someone's view. Ms. Chun checked the height restrictions which were approved by the DLNR 2 years ago and he didn't think it was the Board's kuleana (responsibility) to determine whether someone's view is blocked and if it does there is no rules and no procedures.

It was asked by Member Pacheco whether the building permit restricts the house to 25 feet. Mr. Laporte said it is actually 15 feet. The City and County LUO is 25 feet. The deed is 15 feet for the highest finished grade of the set back line.

Member Pacheco asked about the watch tower and why that is there. Mr. Laporte said he doesn't know where "the watch tower" came from, but it is the original grade of the lot which has never been altered. It was left in place and will stay in place. Ms. Chun could have built to her set back lines and had a mansion. She didn't. She is building within the building envelope and this portion of her finished grade remains undisturbed exactly as it was approved in 1971. He didn't know for certain, but he imagined it was probably the original slope of the hill. And, no she did not excavate her entire lot. That is the highest point of the intersection of the set back lines.

Member Pacheco asked what the purpose was of leaving it (the watch tower) there. Just to establish that? Mr. Laporte said no, that the area that was excavated was because it's a home built into a hillside and you got to excavate into the hillside and that did not go to the maximum set back line. It was left in place because the building wasn't being run smack up against every corner of this buildable area. The homeowner, Carol Chun testified that her parents said it is a very tough area to excavate because it is really solid.

Member Pacheco said he was a little confused looking at the photo on Exhibit E and asked if Mr. Laporte had seen it that it looks like a separate cinder block retaining area to hold that corner up. Mr. Laporte said that is correct. Ms. Chun confirmed that area has not been touched. It has not been built up and as far as Mr. Alston claiming that they built up the building pad she referred to the building plans which is what it is now that nothing has been built up. Mr. Laporte pointed out there was a retaining wall built in 1971 which is exactly where it is now and that back corner remains the same. It was an excavated area because the rear portions of the house were built into the hill and that cinder block wall was original.

Member Goode referred to Exhibit 4 and 6 of staff's submittal showing the highest finished grade point on the uphill mauka side of the retaining wall as well as the old house and the new

house. Ms. Chun confirmed that is exactly the same. Member Goode asked whether it hasn't been graded or built on to make it higher and Ms. Chun said no. Member Goode said it has the same grade and Ms. Chun acknowledged that. Mr. Laporte said it is the same retaining wall in Exhibit 3, 1971.

Member Goode asked whether his intention is that the Board has no authority to institute items (d) and (e) that says "...reserves the right to judge interference of view ..." and we understood and agreed the question about this point and the antennas. Is it your intention in that language to say you don't have the right to agree with it? Mr. Laporte said it's permissive that it has never been exercised having looked at a lot of records. There have been no rules promulgated under HAPA to utilize that function. Secondly, the State was operating as a private developer, essentially. Like a private developer that developer loses the legal right to enforce restrictive covenant once he sells the last lot which passes on and runs with the neighbors. There were provisions in the deed or sales agreement that if the person who bought it did not construct a house the State could come back in and reacquire that property. There are two questionable legalities: 1. it is no longer public land to the State. 2. this Board was restricted by its legal authorization as a private developer upon the last sale of the last lot and that right of way was terminated.

Member Goode asked it's questionable, but what is the impact of the views to the neighbors' homes. Mr. Laporte said they'll be impacted just as Ms. Chun will see their house, they will see her house. Member Goode said they will see her house because the difference is 4-1/2 feet taller. Ms. Chun said her feeling was to build a house on Diamond Head and it would have to go higher than the house below them and as shown in the photos all her views of Koko Head is gone. Her neighbor is in front of her. She doesn't know how anyone can build a house that when you do the plans you need to get every single neighbors' approval. We did everything that we are required to do and she just wants to comply, but she feels she has every right to maximize her view. The top lot could say you are blocking my view by this much and she is going to tell the lot below her you are blocking my view by this much then you can only build the house only this high and it's just not right. Everyone at the top can tell everyone below how high they can build. It allows no freedom to build. She didn't go into this project saying she wanted to block their views. She wanted to take advantage of the views that she could and why wouldn't she want to build a house on that lot. It doesn't make sense to her to want to tear down the old house to build a new one only to build it just like the old one. She didn't break any codes and no ordinances, nothing.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities and liabilities. Member Gon seconded it. All voted in favor.

10:00 AM EXECUTIVE SESSION

10:23 AM RECONVENED

Mr. Alston asked to offer rebuttals to Mr. LaPorte's testimony. Chair Aila said you have 2 minutes. Mr. Alston pointed out that Ms. Chun said they can not build up and showed on a photo where the area was a sloping yard before and they moved the house forward from where it was where it does looms over the street. The deed says you will consider minimizing the views from the neighboring lots and not outside of the area and that this significantly impairs the views from neighboring lots.

Dr. Calvin Kam testified that he is the owner of lot 41 and neighbors of the Moores that they will lose their view because the house on 43A is so huge. Our position is not only the height restrictions it's the view plane from neighboring lots and the view of Diamond Head. This building coming up is not a home, but more like a building on lot 43A. His home is close to 50 years old and will be redone in 10 years. He hoped whatever rule they establish now it won't change in 10 years because he has the smallest home on the block and he doesn't want new restrictions from an architectural review board to tell him what he is to do with his property. His concern is if you allow these 2 structures to go up it will block his view plane. It is already bad and will only be worse and you should go over there to see what it really is and if it fits the description of what Diamond Head should look like. This was reported 25 years ago and now we're doing it again.

Member Goode asked whether staff reviewed and approved these plans. Mr. Tsuji said on Ms. Chun's they did. It came to his attention after receiving Mr. Alston's letter where staff looked at this more carefully. The Oahu District land agent reviewed and signed off on the plans and was within the 15 feet height restriction from the set back.

Member Goode asked whether the division has building inspectors and Mr. Tsuji said they never had any. Member Goode said the City has and asked whether the City enforces the 15 foot, but of course they are at 25 feet. Mr. Tsuji said he thinks they are enforcing their rules and typically, the County sends plans for permits they receive to the Department when they noticed it was on the Diamond Head View Lots to check if everything is ok which is normal and sometimes homeowners come in on their own. There were 2 instances where the County neglected to do that and there were 2 references made of the constructing of a home where the State made the County aware of that to come to the BLNR for review and approval. The deed does say to the Board and nothing that says the Board ever delegated authority to anyone other than itself to review the plans. Ms. Chun's despite staff signing off it went back to the Board for formal review and approval.

Member Goode asked when the house is completed do you send staff out to check if it is within the 15 feet. Mr. Tsuji said no they have not. Member Goode asked if the Board is inclined to approve this would it be helpful to have a condition that states "upon completion of the home the applicant shall submit a survey from a licensed surveyor showing that the highest point of the home is no greater than 15 feet above this if you approve this 141.5." Would that be helpful? You can put that in your files and if they comply, yes. He is inclined to do something like that.

Member Gon asked if that is put in place whether or not Ms. Chun is amenable to that additional condition. Ms. Chun nodded and said yes.

Member Gon said every neighborhood is impacted by surrounding development. Since this situation is particularly sensitive at a place like Diamond Head and is subject to the public view plane of that landmark and the development around it, but in this case it is the view planes of the neighbors being impacted by neighbors. Someone had the foresight to require a 15 foot height limit with regard to the buildings and since staff has convinced him that those conditions are in fact in place they have just added a condition that confirms that after the construction is done he would move with that added additional condition we accept the recommendation of staff. Member Goode seconded it.

It was asked by Member Edlao whether that will be #3 and Member Gon said for the record it has been added.

Member Pacheco said we seem to have a very clear point of the highest grade, but he did have questions about the build up of the lot itself. The difference between having a house built up and not grading the lot at all and cantilevering the house out what the difference would be. He does know there is a height under house restriction for 9 feet from the foundation and asked our Board's architect. Member Agor said he is stuck on the fact that if a point is given allowed to be taken from a certain point to establish the height and that point is established at the building line. He thinks the owner of the property has been using the same point that was used on the previous construction – he is satisfied with that.

Chair Aila took the vote and all voted in favor to amend.

Mr. Tsuji said if Mr. Alston wants to request a contested case hearing to say it here orally by the end of today's meeting and follow up in writing within 10 days. Mr. Alston asked for a contested case hearing and will follow up in writing.

The Board:

Approved as amended. The Board added a condition 3 to the Recommendation Section to provide that:

“3. Upon completion of the construction of the home, the owner Carol A Chun Trust shall provide the department with a survey or as-built drawings (or the equivalent) that establishes the completed structure having been built within the 15 feet height restriction as provided for in the Chun Deed.”

Mr. Alston, counsel for Messrs. Klein and Komer requested a contested case. Mr. Alston was advised to follow-up with a written request within 10 business days.

Unanimously approved as amended (Edlao, Morgan)

Item M-1 Issuance of Direct Lease to Hyak Aviation LLC, Honolulu International Airport, TMK no.: (1)1-1-72:11 (portion)

Ross Smith, Property Management/Land Acquisition Supervisor for the Department of Transportation (DOT) – Airports Division asked the Board's approval on item M-1 and

conveyed that this is a private structure and Hyak Aviation is allowed to provide services from that building.

Unanimously approved as submitted (Gon, Agor)

Item M-2 Request to Rescind Prior Land Board Action Under Item M-1, February 10, 2012, and Request for Approval of Revised Amendment No. 1 to Restaurant and Lounge Concession Agreement No. DOT-A-11-0006 at Lihue Airport, TMK: (4) 3-5-01: Portion of 8

Mr. Smith indicated as requested by their food and beverage concessionaire at Lihue Airport to allow him to add space to the lease and begin construction of improvements. The concessionaire located on the mainland asked to put in additional locations since they did the financing as one big project which is what this is for.

Member Gon asked whether there was a substantial increase in the area. Mr. Smith said they are putting in 2 kiosks either in the Lihue Airport Concourse or across the street in Ground Transportation Building.

Unanimously approved as submitted (Agor, Gon)

Item D-2 Consent to Mortgage of Sublease K-4 with Estoppel Certificate, General Lease No. S-5619, Natural Energy Laboratory of Hawaii Authority, Lessee, Cyanotech Corporation, Sublessee/Mortgagor, Pacific Rim Bank, Mortgagee, Kalaoa 1st-4th, North Kona, Hawaii, Tax Map Key: 3rd/ 7-3-043: 063.

Mr. Tsuji conveyed some background on item D-2 that this is for purchase of some equipment and maybe some building improvements to the facility. Cyanotech representative, counsel and NELHA's Executive Director were here for any questions.

Unanimously approved as submitted (Pacheco, Edlao)

Item C-4 Review and Approval of Project Recommendations for Funding from the Fiscal Year 2012 Legacy Land Conservation Program (Land Conservation Fund)

A number of written testimonies were distributed to the Board.

Paul Conry, Administrator for Division of Forestry and Wildlife (DOFAW) reported on item C-4 which was funded by the Legislature, implemented by the Department on the annual selection and approval of lands for purchase under the Legacy Land Conservation Fund. This year the program is proposing an award of \$4.6 million in funding for 6 properties fully and partially for a 7th. The process includes a request for proposals, it's reviewed by the Legacy Land Commission which makes recommendations, staff consults with the Legislature, the Legislature concurred with all these acquisitions, comes before the Board for approval, then the Governor's approval

and staff will encumber everything by end of the fiscal year. They have a good selection of proposals that indicates the interest in and support for the program.

Member Gon disclosed that because of The Nature Conservancy's involvement in 2 of the projects listed he recused from item C-4 and left the room.

Mr. Conry indicated that there is a mix of properties, acquisitions of fee interest for the Department and a combination of conservation easements and land trust. He recognized staff, Molly Schmidt.

Kaleo Paik testified that she represents the Ala Kahakai Trail Association partnered with the National Park Service and they are in support of the acquisition of the Kaiholena property since the trail goes through connecting 4 national parks. She related purchasing the property from a land owner and to preserve that one section.

Mr. Conry noted that The Nature Conservancy's representative was here for any questions. Oahu and the Big Island had the winning applicants this year and staff will be announcing for the next round and encouraged applicants to submit.

Member Pacheco said that the whole coastal area in the Kahuku section down at Manuka needs some extreme management and hoped the partnership with the County will move this in that direction. Mr. Conry acknowledged that and is one that was partially funded. Staff is working with the County to direct them to endangered types of funding.

Unanimously approved as submitted (Agor, Pacheco)

Item C-2 Progress Briefing for Research Projects, Educational Tours and Administrative Challenges of the Hawaii Experimental Tropical Forest, Hawai'i, TMK's (3) 3-7-001:002; (3) 3-7-001:012; (3) 7-1-001:001; (3) 7-1-001:004; (3) 7-1-001:006; (3) 7-1-001:007; (3) 7-1-002:001; (3) 7-1-002:002; (3) 7-1-002:008; (3) 7-1-002:013.

Mr. Conry said that item C-2 is a partnership with U.S. Forest Service which is a progress briefing or update to the Board on the implementation of the Hawaii Experimental Tropical Forest (HETF). No Board action is required. He noted that they are getting more support from the region or research branch of the Forest Service.

Melissa Dean testified that she is the coordinator for the United States Forest Service (USFS) Experimental Forest from Hilo, Hawaii introduced Susan Cordell, a scientist with the USFS who could answer any research questions. Ms. Dean presented a Power Point presentation – Experimental Forests map with 80 across the country and Puerto Rico, HETF Background where in 2007 they established a cooperative agreement with DLNR. There aren't any USFS lands in Hawaii. The HETF is a Federal overview over State lands designation HAR 105 that overlays that. She showed HETF Locations and Management, Pu'u Wa'awa'a, Laupahoehoe, HETF Administration and who they are, HETF Research since 2007 and projects, Education/Outreach/Service Trips with student and teacher workshops and the number of

participants, Funding Opportunities - YCC, Laupahoehoe Facilities, Pu'u Wa'awa'a HETF Facilities, Field Education site - EA completed.

Member Gon commented that he was heartened by the research and the ohia rust project caught his eye and asked to briefly talk about the issue and what effects they've seen by the HETF. Ms. Cordell said there is an elevated fear on the Big Island and people are documenting it more and more. She sees most of it documented on the wet side of the island. Ms. Dean pointed out that research project is island wide. Member Gon gave some background on the rust and if a strain comes in that devastates our ohia forest it would be a really bad thing and he was glad we were watching it closely.

Item D-5 Amend Grant of Non-Exclusive Easement for Gas Lines Purposes filed under Land Office Deed No. 28331 by Expanding Easement Area; Issuance of Right-of-Entry for Access Purposes, Honolulu, Oahu, Tax Map Key: (1) 1-2-021:portions of 035, 036, 039, 041, and 043 and (1) 1-5-042:portion of 002.

Mr. Tsuji asked to amend the submittal with any references to the Gas Company as being an LLC.

Charlie Calvet representing The Gas Company testified that he was here for any questions.

Deputy Attorney General Colin Lau said that it's indicated on the submittal as a corporation, but is actually an LLC and should be The Gas Company, LLC. Member Goode asked whether there was any issue with us proceeding with this item and Mr. Lau said no.

The Board:

Approved as amended. The amendment was to change references in the submittal to The Gas Company being a corporation to it being an LLC.

Unanimously approved as amended (Pacheco, Goode)

Item C-5 Request to Approve Memorandum of Agreement Regarding Public Use of and Access to a Portion of the Alleged Historic Trail Crossing Land Owned by Haleakala Ranch Company. District of Makawao, Ahupua'a of Kalialinui, Maui, TMK: (2) 2-3-005:004.

Numerous written testimonies were distributed to the Board members.

Mr. Conry conveyed some background on item C-5 noting that there is some litigation in progress and Deputy AG Bill Wynhoff is here to answer any questions. What staff proposes to do is to establish an MOA (Memorandum of Agreement) with Haleakala Ranch to provide limited public access to the property for hiking and the MOA does not address the issue of claiming legal rights as the State claims for the trail and the Ranch claims we are not going to contest that in this MOA or establish ownership under this MOA. We maintain we continue to own the trail. The MOA would establish a way that the Department can then open up the trail meeting the needs of what our staff resources are to provide some open access across a minimum

of 2 times a year for guided hikes that would be either by our staff or by the Ranch or another third party that they would be in agreement with. The MOA also provides that those can be renegotiated in the future so the agreement can be amended with mutual consent of the parties. The provision in the way is the Board is the only entity that can terminate the agreement. If policy resource or statutory or anything like that the Board would have the ability to terminate the agreement and change the situation. He counted about 65 written testimonies heavily in favor of opening the trail providing more access to it and the issue in front of the Board is getting approval to enter into managed limited access.

Deputy Attorney General Bill Wynhoff said while your staff was negotiating this MOA some folks who wanted to use the trail got tired of waiting and sued the Board and Haleakala Ranch to 1) force the issue by having the court make a determination as to who owned the trail and 2) if the outcome of that lawsuit was that the State did own the trail then they wanted the court to order this Board to open the trail up to the public and that lawsuit is still pending. One of the people that they opposed was William (Chair Aila) and the discussion was had that it was really a decision for the Board which was appropriate. If the lawsuit goes to fruition the issue of the ownership of the trail will be decided even though that wasn't something that staff wanted to enforce at this time.

Mr. Conry apologized for the quality of the map in the submittal and distributed a better map.

Member Goode asked what is the timing of the lawsuit. Mr. Wynhoff said the trial is set for January 2013. Member Gon asked whether this trial is the same as mentioned in staff's submittal and Mr. Wynhoff acknowledged that was put in.

Member Pacheco asked whether this is Land Court, too. Mr. Wynhoff said he didn't know and that part of it was Land Court he guessed. He didn't think that would matter and they would have a discussion about that in some other context as to where registering it for Land Court would wipe out any claims to the trail. It was their position that the Ranch would take a different position, but he didn't know how much of a factor that is in this case.

Member Gon asked in the discussion of the history of this trail is there any relation or indication of the nature of the trail and whether or not it stems back from Kingdom days or even before that. Mr. Wynhoff said that the people who filed the lawsuit believe that it extends from Kingdom days and they could answer that question better. He thinks the Ranch would say it doesn't.

Tom Pierce testified that he was here on behalf of Public Access Trails Hawaii (PATH), a non-profit on Maui and had provided written objections including detailed information about the trail with photos. It has already been determined in 2000 that the trail is State property and reaffirmed by the Attorney General's office. The trail is verifiable and not correctly stated in staff's recommendation. All parts going through the Ranch property are on the ground in a way where they can find it and their surveyor did that part. Mr. Pierce related some history background regarding this trail since the 1880s to 1900s from his written testimony. In 1905, the Territory of Hawaii staked out this trail which is an ancient trail and was the way to get to the top of Haleakala until the road came in. The State never acquiesced in it's ownership of the trail.

Mr. Pierce told the Board that allowing a few dozen people a year to travel on the trail is bypassing the issue. This has been in litigation since January 2011 and they are glad this is finally before the Board. They are unhappy with the way it's here. The public is on the defense here today because of the way this MOA is drafted. This is not a beneficial thing to the public. It does benefit the Ranch. The interests here, the process, the leadership and what this MOA is really and how and they ask the members to deal with it. There are 4 interests – the Ranch, Government, DLNR employees, and the public.

1. The Ranch wants to deny access.
2. The Government's interest is to protect public lands – Chapter 171.
3. DLNR's interest is to rubber stamp what the Ranch submitted as a MOA and that is not the right approach here.
4. The public should be the only interests here and the frustration with this process lasting 10 years which is why this lawsuit. With the public trust is a right and that right is protected by you all.

Mr. Pierce testified on the process, the timing of this, one of his clients - David Brown who is a Na Ala Hele member who started this in late 1990s asked DLNR's abstractor Ms. Rowland to look at this and she determined it is a trail. That information hasn't gone anywhere. In 2005, we engaged with the Ranch to work out a solution. We consider ourselves as PATH to respect private rights, but are also here to champion public rights and they saw a clear government road. They asked the Ranch are they interested in settling this and is there a way we can work with you to purchase sufficient lands to make it worth your while. He brought in a third party to verify what he had to say and that was Dale Bonard who is Executive Director of Hawaiian Islands Land Trust. We understand the issue is an ownership issue in dispute and this is an opportunity for us to do some conservation work at the same time. That settlement offer was rejected despite bringing it to them a couple times. Instead the Ranch worked on the Memorandum of Understanding which you see today and that MOA has been floating around since 2008 when they first objected to it. When they saw no other way to make this happen they filed a lawsuit last year and confirmed what Mr. Wynhoff said that they (PATH) sued the Ranch and the State because they felt the State had not been doing their job. This MOA does not benefit the State at all in making its case in his position and it may hurt it, but certainly not doing anything to help out. Since this is not helping with the lawsuit and doesn't really benefit the public, he asked to table this and start the investigation.

Mr. Pierce said that the reason staff brought this before you is not because the MOA is such a great thing a year and a half after the litigation. It is they can put it before you. This is your opportunity to show the leadership he has seen today and that leadership starts with knowing your obligations and in this case it certainly flows from Chapter 171 which is to protect public lands. Another part is to know your authority and send a clear message to staff to investigate this and to turn things around because this is an important issue. He reiterated his request to table this matter and take it back to staff. They turned a huge wealth of documents showing the public rights in the trail as well as the State's rights in the trail. That information was never assessed by the abstractor and the information the Board has about the MOA saying nobody is interested in the trail and clearly that was wrong. That it wasn't verifiable and they proved that wrong. The State hasn't gone through the process of identifying the State claiming an interest in it. They

understand staff is very busy, but asked that they make this a priority. This trail has a history of being Maui's economic engine and could be again asking the Board to do the right thing.

Member Pacheco asked he read staff's submittal and what does he take of their position with all the litigation that is going on and if you don't prevail and the State doesn't have an interest in the trail and we don't have an MOA then there is no chance for the public. Or if we do proceed with this MOA and the Ranch does proceed, at least we have an MOA to work off a public access. What would be the harm of doing this MOA because if you win your suit we would have rights to the land and the MOA, we would have to revisit that document. Mr. Pierce said there are all sorts of ways. The State should really assess what a strong case they have and how weak this looks to be negotiating with a private landowner in this kind of situation. What's the message being sent out to the private landowners? We can get away with this that we can go ahead and deny even if we have a treasure trove of documents. We know it even if we have internal correspondence that we received during discovery sent saying we know we have a government trail up here, what can we do to bury it? What kind of message does that send to the public and to private landowners? We already put the issue of ownership into play and they will or will not prevail having the assistance of the State who they believe has an obligation to doing that. As we saw today, there are other ways of requiring access. If the State at some later time feels it's important, they've lost the ownership rights which they doubt will happen then they can acquire it through appropriations, but right now what does it mean to get a dozen people there.

Member Pacheco asked what makes him think the MOA limits it to a dozen people. It says a minimum of 2 events. Mr. Pierce said it also puts the Ranch square center on what happens. It is not an attractive document from the State side or the public side especially when you got to deal with that trail. We got the information. Why would we go for 25 people a year or some smaller part where they got to go sign up, wait and see when the Ranch does it, if they are tourists if they can plan their trips around an event where the Ranch says could willy-nilly cancel and unilaterally doesn't seem like a great thing for the public.

Member Edlao said at least you have access now. You said you didn't have access for 10 years and this MOA will give you some access until this is resolved later on whichever way this goes and then we can move forward. It is a minimum of 2 events that he doesn't know how they are going to do this, but it was mentioned people do an on-line request and staff will coordinate from there with how many people and when. Or you can say forget this and you don't have access until this whole thing is all resolved for who knows how long. Mr. Pierce said that the Ranch said that no one has asked them permission to do that and they will take that as an invitation to permit anybody to go across based upon that when they ask. According to Mr. Young in his submission if people ask, implacably he is saying he going to give them permission to go across during certain times and do we even need the MOA? We could negotiate ourselves on Maui, but what is before you is the Ranch would love this to go into place and will use this in any way in the litigation that they are good guys and to look at all the stuff we are doing. Are you really protecting the public lands by doing this MOA? Are you protecting the public by doing this MOA?

Member Edlao said we are giving the public an opportunity to transverse this area in the interim. Mr. Pierce said that would be great, but it doesn't say an interim agreement. Member Edlao

pointed out if this goes through there will be access until the big picture is resolved. Mr. Pierce said that in 2008 he wrote to then Chair Thielen on all the legal issues dealing with the MOA and the response a year later did not deal with those. Their standing objection is that the BLNR does not have the authority to enter into an MOA over land that it owns. MOA is for negotiating over private access. How could you enter into an MOA to reduce the public rights to something we already know that the State has been saying for 10 years is a public trail? Member Edlao said that he doesn't think the State has moved forward to legitimize that this is State's land which is why we are going through this. Mr. Pierce said that is what Mr. Conry says.

Chair Aila said we agree there is a dispute. One is whether Haleakala Ranch or the State owns the land and there is the other, but the point the Board member is making is this is an interim solution while the larger picture gets answered. Yes, this would give some access, but would give access on a controlled basis, whereas, if the State were to be in charge of the access he doesn't think they have the resources to make the access safe because it is on a working ranch. You are pushing us to make it available knowing that we don't have the resources to do it. This MOA will allow for public access to go through a process that is safe because it is a working ranch and the Ranch will be able to chase the cows away while people access through. We are getting sued every day by someone falling off a mountain.

Member Goode asked you have State trails that are closed right now don't you and for a long time. Mr. Pierce said there are funds available in the budget for Maui, specifically for trails through the STEP process. They don't know how that money gets allocated, but it is available. Member Edlao pointed out that those funds are for trails that we know that we (the State) own. Mr. Pierce said going back to where you said there is a dispute, but that is an external dispute. The Ranch disputes access, your employees who are experts in this already determined there is no dispute that the State owns it. They aren't saying there is a question and they couched the language, but they are saying more likely than not we own the trail.

Chair Aila pointed out that we have attorneys that are advising them that it may or it may not. Mr. Pierce said that was an opportunity that's evaporated in terms of when you chose that once they decided they had to file the lawsuit. At this point, it will or will not be lost. If the MOA remains standing, if it is lost which we don't think will happen, I don't know. What is particularly distressing about the MOA is an attempt to negotiate with a private landowner over property the State knows it owns and secondly no where in there does it say it is an interim agreement while they work out the lawsuit. Chair Aila said when you say the State knows it owns it that is your opinion. It is the opinion of some of the staff, but it is not necessarily the opinion of the Attorney General (AG). Mr. Pierce said with all due respect he referred to the MOA itself where one of the Deputy Attorney Generals did an extensive memo and it is attached to his objections. That Deputy AG said they own it that they either own a State easement right or in fee simple which was issued in 2009. Chair Aila said and they have another Deputy AG that is advising them now. Mr. Pierce reiterated their request to table the matter and evaluate how DLNR with such a unique trail can take a stronger stance in this MOA.

Member Goode said it seems to him that whatever the Deputy AG or the staff is saying is just an opinion until it is determined whether in court action or if we had a deed that said we own it or we had an easement document that says you have a grant of easement for trail purposes over this

land and that would be the determination. As far as he is concerned we don't yet have a determination. We have opinions floating out there and the court case. Also we have an opportunity to put hikers on the land in a way that appears to be safe and navigates with whatever issues there are on a working ranch that all seems to be a public opinion, but what he is concerned about is all fine to him that it seems like good leadership, good for the public, good for the State given it's resources and the ownership issue being clouded if you will. But, you mentioned a few dozen per year of hikers and that is inadequate. Is there a number more representative of what people are interested in doing in a year's time? Mr. Pierce said they feel they should not be asking the Ranch for permission to walk on the trail that has been on the ground and they have a customary right of access as well as a State right of access to it. We are looking for unfettered access 24/7. Member Goode said so like any other State trail not that all are open 24/7. They walk in at any time walk out the other side or walk back. Mr. Pierce said without getting into the legal side they are putting forth 2 positions to the court - one is that the public's rights are so ancient that it precedes the State's Na Ala Hele Program. In other words the State doesn't have the ability to regulate the customary rights of access similar to shoreline access in ways that the State doesn't regulate through the State Na Ala Hele regulations. Member Goode asked like a PASH right and Mr. Pierce acknowledged that. It would be a right for any person from the public and not just persons in a particular ahupua'a (land division).

Member Pacheco asked whether he was referring to Deputy AG Pam Matsukawa's memo and in that last paragraph she is bringing up the question that it appears that way, but the court's interest has not been done and her opinion is we can enter an MOA with Haleakala Ranch and would not affect any of our agreement or any of our fee ownership in the trail as deemed by the court if the State has that interest. He disagreed with Mr. Pierce that the memo is saying we own it. She is laying out some arguments that may be, but she is not claiming that clearly we own this property. There are questions and whether we own it as an easement or a fee title those are questions that are going to have to be answered in court. Mr. Pierce said he recognized that and we have to understand when she wrote that memo in 2008 which was several years before we filed the lawsuit. The issue is because nothing positive was happening with the negotiations that we were attempting either with the State or with the Ranch. Because of that, we filed the lawsuit and it's our position that the role of the DLNR and the State in advocating for a public trail for public lands that is now an issue before the judge. It will either be won or be lost. The MOA is a little too late and is not going to salvage the land. The thing that should be before the Board today is at a certain level is the question of how they should be litigating their rights and that was not recommended. That is the surprising thing out of this. The thing the State could have done when the case was first filed was they could have cross claimed against the Ranch and could have said we agree with PATH that we own the trail. We litigate this issue and why hasn't that happened? He referred back to Chapter 171 and it seems to him BLNR's obligation is when there is an issue like that they have to do it. What he sees what the Deputy AG saying in 2008 was maybe you don't want to have to file a lawsuit and you don't have to yet.

Member Agor asked you do know that one can claim there is a trail there, but that doesn't automatically require the landowner to allow public access until we've actually determined where that trail is and to do that you have to do a study, leaps and bounds. Even if today we decided that there is a trail there the landowner can say he won't allow access until you determine where the trail is and that is the process they are going through now. Mr. Pierce said

he could put the maps up but they have determined where the trail is and there is no dispute over that. The 1905 finger posts are still there, there are State easements calling out the lower portion of the trail since the 1960s and in 1983 the Haleakala National Park shows the trail from Makawao to the crater rim. He related more history regarding the surveyor and engineer building the trail and news article. It is not cloudy with respect to title and not cloudy with respect to trail location.

Member Gon said he presumed these items that he is bringing forward was brought before in the court case. Mr. Pierce said that is correct. They are a small non-profit doing the work that they feel the State has an obligation to do and reiterated what he believes the Board's obligation is to protect public lands and don't let this MOA be the last time you hear about this case until you hear what the judgment is. This is an opportunity to send out to landowners a strong message that we will not negotiate down the public's rights when there is a very clear right of ownership. We are asking you to tell your employees to look at the record that they haven't told you that this is the best they could do and that this MOA was put together by the Ranch which was administratively simple for staff.

Chair Aila pointed out the discussion of an MOA has been around since his predecessors and the only reason we are taking it up today was because the Ranch picked it up. Mr. Pierce said the Ranch was the first to propose it and draft it. They did not include us (PATH) in those negotiations and no one has asked them to comment on the MOA and that this was being worked out behind the scenes between the Ranch and the State and there is no public participation in this. Member Gon said it is between landowner to landowner. Mr. Pierce said it could be seen in that way.

Member Edlao pointed out isn't this a public meeting right now and aren't you having your say. Mr. Pierce said we are not here to negotiate the terms of the MOA. Member Edlao said but you can comment. Mr. Pierce said with no disrespect they received it through discovery and nobody has invited us until today in final form even though we have a lot of the information and we would like to have a say.

Guy Archer testified that he is an attorney and a member and officer of the Hawaiian Trail and Mountain Club (HTMC). His colleagues decided to look at this with Mr. Pierce's assistance looking at their documents that they discovered in their litigation. Also, he looked at State Archives and the conservation easement recorded at the Bureau of Conveyances. The Deputy AGs' opinions that were done in 2008 and 2009 neither looked at the issue of the Highways Act of 1892 and the fact that Haleakala Ranch Company benefited from the expenditure of Territorial funds in the creation of its 25 foot wide bridle path. In 1905, because of the large number of tourists going up to the crater they wanted to provide an easier path for the horses and that they can only presume there was some benefit to the Ranch or otherwise they wouldn't want the State coming in to spend money on the bridle trail. The work from the Highways Act of 1892 precedes the bridle trail of 1905. The Ranch hasn't produced anything that they own the trail. Everything points in the record to the fact that the State of Hawaii owns this bridle trail and owned it since spending money on it in 1905. The Native Hawaiians rights of that aspect of the trail maybe in dispute, but he doesn't think there is much room for dispute over what happened in 1905 in the building of this bridal trail. Mr. Archer did a 2 page summary memo and focused

in on the key items. What makes the MOA hard to accept is the report that accompanies it in which Mr. Conry expressed the Ranch's concern that the trail passes through the middle of a working livestock ranch and across rough unmarked terrain which is often covered in daily mist and clouds that will impact any visibility. Mr. Archer related that HTMC run hikes every weekend throughout the year where some hikes are challenging. Above 3,000 feet you will run into some rough terrain, some mist, some rain and limited visibility. Nothing unusual about this trail and nothing that presents any dangers to hikers. Not even the cattle where there are places they hike like Kualoa where the cattle doesn't want to have anything to do with us and we don't want to do anything with the cattle, but it doesn't present a danger. Mr. Conry is also unaware of the rock cairns and finger posts on the trail that could guide people going on the trail. A David Brown pointed out that staff closed down 3 important preserves that people used to have access to which Mr. Archer described and that there are limited opportunities for hikers on Maui. With some money that the State DOT has identified for recreational trails for Maui it would cover 6 years total more than 2 million dollars. With both documentary evidence and physical evidence, we would take a more expansive view of what is possible here. This is an opportunity for Maui and this Board, with some reasonable restrictions, to open it up and let people start hiking whether restricted to members of a hiking club or PATH, but to restricting it to be lead by someone from Haleakala Ranch Company for twice a year is not enough. Lets be more forward thinking about this.

Member Gon pointed out you know this is not limited to twice a year it is a minimum of twice a year. Mr. Archer said what is the minimum tends to be the maximum. Member Gon said nonetheless, he doesn't see any statement within the MOA that limits it to two. It is a minimum of twice a year and no maximum is indicated that your statement there is a misrepresentation of the situation. Mr. Archer said but it has to be led by somebody in DLNR or Haleakala Ranch Company. The suggestion is we are going to have to find someone from DLNR or from the Ranch to take the whole day off to lead a hike and he sees getting beyond 2 hikes a year will present a problem.

Member Edlao asked what are the requirements to be part of an organization to do these hikes and that would be unfair for someone from New York who signs up for this. Are we going to let him go by himself? I don't think so. Mr. Archer said in his written testimony he is opposed to the MOA and he doesn't think it is really workable.

Member Edlao asked you also said you wanted us to immediately open this up to have people hike this. Isn't this what this MOA is doing? Mr. Archer said no that the MOA is quite restrictive. First of all who is going to approach the Ranch? Is this going to be done through Mr. Conry? How are we going to negotiate? It's a question of public participation and they would like to see that including the hiking clubs. Member Pacheco said he knows some properties on Hawaii Island whose landowners use a group to self police access across the land and the idea of having an established entity that could sponsor walks.

Don Young testified he is President of Haleakala Ranch and introduced Scott Meidell who is Vice-President and General Manager and Michael Gibson their attorney is here representing the Ranch. He followed up his written testimony with a couple comments. They are here to support the proposed agreement between the Ranch and the State and to answer any questions. To

summarize the main issues first is correcting the history of the MOA. Mr. Young became president of the Ranch in October 2006 and a month later he received a letter from DLNR regarding this trail asking the Ranch to work with the State DLNR to resolve the conflict and come up with something to allow public access and avoid what we are faced with today in terms of litigation. The response was the beginning of what we have today in the MOA with the intent to have guided hikes as the solution to providing public access. That evolved into an MOA that agreed in principal between the State and the Ranch and that was before PATH was formed. David Brown is the principal plaintiff in this case and has a passion for public access and hiking and he participated in this process as a member of the Maui Advisory Council for Na Ala Hele and has many years going back. He is aware of the negotiations and the issues as part of that organization. Obviously, he didn't agree with what the organization recommended and where we were going in terms of managed public access. As early as 2007, we would have effectively had public access which is 5 years now that we have not had public access. Not because of the Ranch, but because of the plaintiffs pursuing their action against both the State and the Ranch.

Mr. Young related that Haleakala Ranch has a 125 year history on Maui and working with the community and with the State DLNR there are a number of partnerships and projects that they've worked collaboratively with, many on-going. Their approach from the beginning is what can they do to work through and what seemed to be a reasonable approach to what works for the Ranch and what works for the public's interest as determined by DLNR and Na Ala Hele. What's involved in terms of David Brown's and Tom Pierce's actions and proceeding on the path of their agenda, it is what it is. We are here today in terms of our side of the agreement with the State DLNR on what is on the table to confirm our chances to continue in good faith that working relationship and work through this in a positive way. And, there is no limit as to what today's MOA says, it's a minimum and guarantee at least the two.

Mr. Young said when they started this the trail hadn't been used for 80 years. Physically, it's contrary to what was presented. The markers are there, but it is not at all certain where that trail is and we are dealing with a remnant of a section of the longer trail that original went to the crater. The ownership on the mauka side is the National Park and Federal Government which is outside of our 3 mile section that is involved in this and it's not clear to use that. No one knows exactly where the 20 foot corridor is. In addition to the MOA and their commitment to the State and the public's interest he would stand by the Ranch's history and involvement in what would be fair and appropriate. He acknowledged that up to now, to their knowledge, no one has asked to be on the trail. Physically, the trail itself they do believe there are safety issues in terms of livestock operation and very real concerns for us on the business side and liability on our side. Also for public safety the physical condition of that trail particularly the mauka side is rough and difficult. It's important for us that whatever access is there is managed. Particularly with DLNR staff who knows what they are doing that they would be more comfortable in accommodating public access. Open 24/7 unfettered access is ridiculous and wouldn't serve a purpose. The markers and the historical significance are of interest. From what could be forced upon us we would expect for those interested in the history and would like to see historical markers what we are recommending seems appropriate, fair and reasonable. They were prepared to do that since 2007. They support going forward with the MOA and hope to minimize any further litigation to resolve this quickly. We have a difference of opinion as to how it should be resolved with the

plaintiffs but this is the Ranch's perspective with our background and participation with the State DLNR in going forward on this or any other projects going forward.

Member Pacheco asked whether the advisory council was involved in their discussions with Na Ala Hele. How do those discussions happen? Did it involve Na Ala Hele going back to their advisory council and coming back to you? Mr. Young said the first discussions were in 2000 with the Ranch and he related his testimony earlier when he joined the Ranch on what the letter said was that they have a dispute and not wanting to take legal action and it seemed we would be open to responses. At that time they did have discussions with Na Ala Hele and did say 2 guided hikes. They want to make sure that whoever is out there knows what they are doing like giving historical interpretation and that the trail doesn't take you anywhere like to a beach or to the crater. It is only the remnant section of the Ranch and is not suitable for recreational hiking.

It was asked by Member Pacheco on whether there were discussions with the National Park Service (NPS) about accessing this trail. Mr. Young said the focus is on this over 3 mile section that ends at the mauka section of Haleakala Crater Road and is not at the boundary of the Park. He didn't think the Park would be open to a new trail coming in independently, but their focus is working primarily with DLNR to manage the public interest and haven't been open in engaging a third party since they did have an existing agreement that seemed reasonable with the State.

Member Pacheco's concern with the MOA was condition #2, section A on page 2 that the company or DLNR representative has to lead the hike every day. He asked would they be open to any kind of language that extended that to an organization that both of you would agree with that you could work with like a Trail and Mountain Club with the practicability to schedule. Mr. Young said they conveyed this to the plaintiffs and their primary concern is it has to be managed access and if we are both comfortable with who is out there he thinks they will be open to it. It has the potential for revisions for mutual agreement and if it works for the State, it works for them. He didn't want to outline all the details of exactly all that would be in it.

Member Goode asked if this passed when would be the first event and how would they find out. Scott Meidell said in their discussions with Na Ala Hele they made it clear that we would institutionalize the program at the Ranch to provide for a guide and work with DLNR/Na Ala Hele and particularly utilize their existing hike information and coordination infrastructure to work it out. He couldn't see why they couldn't start immediately.

Member Goode asked whether they can handle more than a few dozen people per year or an idea of the capacity or a hundred hikers per year. Mr. Meidell acknowledged that they are committed to institutionalizing a program to do this and if the demand were such then that is what they will do. Mr. Young said that they are looking to Na Ala Hele to help us manage the access and how they can make this work. The number of times is better to deal with than a mass group working through DLNR and the Ranch they will work through that.

Member Pacheco asked whether they have a trespassing issue there now. Mr. Young said yes. Member Pacheco asked one of your incentives is your indemnification with the State. Mr. Young acknowledged that.

Member Gon said the trespass issue, the concerns of a private landowner and that the State has a history in the existing trail on some sort of easement has possibilities along that path, but it still behooves the State to work closely with the landowner on either side of that easement and the MOA is one of those things that helps formalize and works out the details. Mr. Young said if it did become a 20 foot public corridor that was owned by the State and open for public access it will become a fully fenced corridor and a much less desirable hiking experience. What is presented now is in the context of a wide open pasture lane and the experience you would have on a guided hike. If they were forced into a situation it is another consideration that is fair and reasonable with what is on the table here versus the extreme alternative of open public access.

Mr. Meidell said what is driving that particular point and the safety issue is not the public's interface with the cattle as is the case along the Haleakala Crater Road or other access easements across the Ranch. This area has a major infestation of gorse which has required a very complex, expensive labor intensive management program that involves multi-grazing of species of goats, sheep tended by guard dogs and movable paddocks. In addition to that they have herbicide spraying and heavy equipment going through this area which sets it apart from the Crater Road. Guard dogs have a huge issue with people bringing their own pets or going where they shouldn't go where the guard dogs are in place to protect the sheep and goats from feral pigs, damage from deer and feral dogs. Unfettered public access that was mentioned, a fence corridor would have to be in place in the interest of public safety as well as our own liability concerns.

Michael Gibson testified that he is the attorney for Haleakala Ranch. He wanted to make 3 points that Mr. Archer and Mr. Pierce both said that there was no dispute about title where he referred to staff's submittal and a letter from Tom Ludnecker which is read from page 7 – Thus we conclude the bridle trail is owned by Haleakala Ranch Company and not by the State. They also said there is no issue with respect to the location, but if you go to Figure 5, the last page of Mr. Pierce's objection says the government correspondence in 1907 reveals that the engineer decided to divert from the ancient trail in some places to make the climb more comfortable to hikers and horse riders. The red dots show the diversions from the trail. In their own materials they are admitting that there is a dispute as to where this trail is that they are seeking to have the court rule on. This is a trail to no where. The Federal Government is not a defendant or a party in this case. The trail they are dealing with in the MOA is a trail that goes approximately from the mauka end of Olinda Road to the Crater Road and stops short of Haleakala Crater. The attraction Mr. Pierce was talking about that was rivaling the lava flows on the Big Island is not happening in this matter.

Member Pacheco asked whether he knew if the NPS maintains any section of that trail on their property and Mr. Gibson apologized that he didn't. Member Gon said he had a rough idea from the maps that it might have something to do with the trail going up to the Halemau'u Trail head, but the continuity of that existed for a long time.

Jay Feldman, President of (HTMC) and as an avid hiker he represents the public to some degree in opening this trail and related some background history of HTMC that they lead hikes for the public every weekend as well as members only. They've work with DLNR and Na Ala Hele often and regularly help maintain the trails for Na Ala Hele with 20 to 30 people. He never heard of this trail and would like to hike it. His members have expressed interest in hiking it as

well and would like it made available to the public. The MOA is so restrictive and understands that it will open the trail during this interim period, but it seems to be written in the best interest of the Ranch as opposed to the public. When you have a minimum established that is typically followed and there is no reason why the Ranch would say lets do a dozen hikes a year or more, but he would love it if they would and didn't see why the minimum couldn't be boosted to a higher number just because it would make a lot of people happier. It seems that the control is up to the Ranch to decide according to the MOA and they can cancel it if they feel there is good reason to. Mr. Feldman questioned how the hikes would be organized or structured or announced and it wasn't in the MOA, but it seemed to him that it should be done in a way that tourists can take advantage of and not only twice a year but many times during the year. It would better than what is stated in the MOA now and suggested changing the MOA with a dozen or one hike a month at least. He related hikes on Oahu that some are difficult and all are open 24/7 that he can't imagine anything difficult on the trail. As far as dogs, they run into hunter's dogs all the time and the cows are more afraid of him than he is of them. Make the trail more accessible for the public's interest during this period.

Member Edlao pointed out you haven't been on the trail and don't know what state it is in. As for the minimum because the trail has not been used legally for years he thinks this minimum is a starting point and maybe it will grow to 25 hikes a year. You know safety is an issue and with this MOA between the State and the Ranch we are trying to get something for people out there, but in a safe manner which is why it's got to be managed and controlled. As things are safe it can be expanded to more trips. Mr. Feldman said that makes sense and he understands it wouldn't take much for an experienced person and he would volunteer to do it to establish the safety of the trail. Member Edlao said maybe you will be called upon to do this. We don't know, but this is a start. Mr. Feldman said that HTMC has worked with DLNR/Na Ala Hele. Member Edlao said that the Ranch did say they would work with an established and knowledgeable club.

Member Pacheco asked whether HTMC hike trails on Oahu that go across private property and State land. What kind of arrangements he thought would work well and are managed? In some cases, these are fragile resources that those trails lead to and from a conservation standpoint it's good to have a check point access up into those areas because of the numbers. In your organization working with different landowners on Oahu what kind of solutions have you found worked well? You guys sponsor those so it is in your kuleana to be responsible for taking people up and down. Mr. Feldman acknowledged that they hike across private property and State land. They do have a good reputation for responsible hiking and safe hiking. He worked with Kamehameha Schools on several of their trails which work to their mutual benefit. HTMC keeps their trails open and they allow us to hike them. HTMC will bring in anywhere from 30 to 50 and sometimes up to 80 people on one of their trails. Kamehameha allows us with our leadership to take the people in and take the people out. And, they have a signed agreement with them, an MOA and they have insurance. They give us the key or combination and in we go and out we go.

Member Pacheco said one of his concerns was creating an access portal for the public on a section of trail that drops people off in a place that they don't have authority not knowing the state of the trail. He is a hiker and he knows people will go 23 miles up hill at the end of that trail and they are not going to turn around and walk back down because the whole purpose of

that trail is to the crater. Mr. Feldman said based on what he has heard, he has not been on the trail, but he assumed the top of the trail hits the Crater Road and he doesn't know if it's illegitimate to walk on the Crater Road. He assumed people would do that and that he would too.

Member Gon asked when he thinks of HTMC he thinks of it largely as an Oahu club. Is it actually statewide? Mr. Feldman said they do hike all the islands and all of their hikers are found on all the islands. Member Gon wondered whether there is a presence on Maui that could be a resource for the Ranch and Na Ala Hele. Mr. Feldman said he can't speak for them, but they do have members on Maui. They could work to organize something with the Ranch. Member Gon said he was thinking ahead that HTMC is an established hiking organization and does have a good reputation with both the State and the private landowner. Mr. Feldman said that is the one thing they truly believe in and that's hiking.

Member Edlao said he agreed with Member Gon that it would be real good to let this go through and if the Ranch is open he is sure the State would be open to get you involved in perhaps hiking it and see how safe it is and what needs to be done to make it safe to have tours. Mr. Feldman said he can't guarantee anything and could speak for their Board, but they would be very interested.

John Brown, a member of HTMC testified that they went to Maui recently and hiked down Haleakala from the top camping and hiked back out. The desire of their small group was to start from the bottom and hike up, camp and then hike back down. When talking about a guided tour they want to know how they are going to approach it for people who want to go through on their way to the crater. If it was open it would be self guided. There is no cell phone service up there and if they come down early how will it be arranged and will it go on their schedule rather than the Ranch's schedule. Is there monetary involved? Member Pacheco said the MOA specifically says free. Mr. Brown questioned why have 26 hikes a year if they want to be there to guide somebody that there is some cost impact on them to do this and what is the incentive for them to do more than the minimum if they need to have a ranch hand escort them every time there is a hike. Member Edlao said why would you even question that when they said they are willing to do it. He brought up a good point that most hikers will want to go up and not come back down and this is something that they need to look into. They said they are willing to do this much and maybe even more. They are making it available at no charge. Why question it if they are allowing it?

Chair Aila said we don't think we can answer Mr. Brown's question right now. Mr. Brown said he understands that and asked to think about those things to negotiate this. The Ranch may say they already did 4 hikes and you are only 2 more people and will use up 2 more hikes coming up and going back down. Chair Aila said we understand that we won't be able to accommodate everybody's wishes. Member Edlao said this is a work in progress.

Member Goode mentioned other properties that are accessible – Polipoli State Park, Skyline trail, other private property and if you desire a longer hike there are other avenues to do it.

Mr. Pierce reiterated tabling this to have staff research this, that he already walked the trail, displayed maps and photos, if safety is a concern there are 4 people who walked it with no problems so safety is not an issue. The Ranch took the risk knowing they had a public trail and it is their problem now. If they schedule on the third Friday of the second month this is not going to get used and it is what the Ranch is counting on.

Mr. Archer said it's important on the conservation easement brought up by the Ranch or at least the facts of it that The Nature Conservancy holds the conservation easement and he described the parcel that the trail is on that he wanted to get the details of it. Member Pacheco said they are doing pasture management on their land. Mr. Archer agreed and said but it does not directly impact this trail as far as he could tell referring to a map at the Bureau of Conveyance and could see what The Nature Conservancy has been doing. Member Gon said that is in the Waikamoi Preserve, but certainly not in this trail area. Mr. Archer said to look at Book 17, 305 and pages 481 to 527 in 1983. Member Gon pointed out that is no where near this trail. Mr. Archer said because the Ranch raised the issue that they are eliminating gorse. There were more discussions regarding this conservation easement. Mr. Young noted that there is 5,000 acres to The Nature Conservancy that is part of a conservation easement at the Waikamoi Preserve that the trail corridor is entirely separate and is subject to gorse as a threat and under active land management. Chair Aila asked how far apart are these 2 parcels and Nelson Ayers, DOFAW staff said Waikamoi Preserve is about a mile and half away from this trail.

Mr. Young said that when they walked the trail David Brown fell twice on that hike that there is a danger on that upper section. To the people who haven't seen it you need to be careful in terms of the assumption of what's out there and in terms of the experience.

Member Pacheco said he wanted to understand what negotiations went on and Na Ala Hele program's perspective. He asked what questions have they had with the NPS or have they been in the discussion at all. Mr. Ayers said none. Member Pacheco asked when you were negotiating the MOA was that something staff took back to the Advisory Council or did it go back. What kind of input did the Advisory Council have? Mr. Ayers said his understanding was when the MOA was initially developed it went through the Na Ala Hele Maui Council, it bogged down and ended between our Deputy AG and the counsel from Haleakala Ranch and they started up again and this is the result in the Board submittal the agreed upon MOA. Yes, it was forwarded to the Maui Na Ala Hele and did go through public forum. Member Pacheco asked how many times did it go through the Council and Mr. Ayers said a couple times.

Member Agor asked you talked about alleged trail in the submittal or is it a trail with leaps and bounds. Moana Rowland, abstractor for DOFAW said there are no leaps and bounds.

Member Pacheco said Na Ala Hele has had to deal with issues with historic trails that said it is here, but not, going to court, etc. He asked about the Highways Act when the government put money into the trail and how does that Act kick in there. Ms. Rowland said based on what Mr. Pierce presented on the 1905 document from archives she is not sure what location those improvements were spent on. Haleakala is a big mountain and she doesn't know where they were spent on. Member Pacheco asked so there is no clear indication of those trail improvements and you could imply you have the bridle path and you got the fence post and would you imply

that was part of the improvements? Ms. Rowland said what she was saying was she didn't know where those monies were spent.

Member Goode asked there is a minimum of 2 hikes right now and talks about having a representative of Na Ala Hele and/or the Ranch. Are you as Na Ala Hele prepared to do even more hikes? Mr. Ayers said yes that they need a starting point and they've agreed that upon demand. Basically, how this will work is people will sign up on-line and our trail specialist on Maui will query it to see whether it meets the threshold for capacity and then they will call each individual to leave their number, address and e-mail and they will call to contact that they will be coordinating this hike and the information will be on the website to prepare the hiker to the things that concerning hiking safety which will be on demand. If they reach 30 to 50 if that is the capacity agreed to then they will coordinate the hike. They will do the next sign up and people will sign up according to demand and they will coordinate the hike.

Member Pacheco said he wasn't sure how well that will work which seems like a lot of work for staff. He wondered if it was possible like Hakalau National Wildlife Refuge which has one area open to the public and others open by permit for commercial tour operators, science, etc. and their Nalua Track is open every third weekend of the month and he would be interested in some language in Section A.1. to have a minimum of 2 hiking events of each year and also accommodates public demand. Something that puts it in there that we don't just have to do 2, we will reasonably accommodate what the demand is on the trail. Instead of have an on demand put in here to make it flexible it could be done by scheduling. Say once a month on a weekend it's open and then one day during the work day week throughout the month and start with that. With 24 opportunities people can plan or schedule. Doing it that way Mr. Ayers talked about would take a lot of staff time and he doesn't know how that would work with the hiking community. Mr. Ayers said he understood his concern. DLNR is committed to working with Haleakala Ranch to make this work. Whatever resources are needed they will negotiate and discuss with Haleakala Ranch to make this accessible to the public based on need and demand.

Member Pacheco asked how about a pilot schedule program that would be something of interest to him. Mr. Ayers said that would be something that they could discuss with the Ranch. Member Pacheco asked you wouldn't be averse to inserting some language in here that would accommodate that kind of planning.

Member Edlao asked what would be your suggested rate. Member Pacheco said he had more questions and wanted to go into executive session.

Member Goode said he is in support of the MOA with some provision that it accommodates the demand because he doesn't think 2 hikes minimum is adequate enough, but he would rather the Department and Ranch work that out. The Ranch has a number of ongoing activities up there and that doesn't lend itself to a personnel responsibility kind of thing. Member Pacheco agreed that he would like to add some kind of specificity into the MOA and maybe add some language that references that and shows you that is part of the solution.

Board member Pacheco made a motion for the Board to go into Executive Session pursuant to Section 92-5(a)(4), HRS to consult with our attorney on questions and issues pertaining to the

Board's powers, duties, privileges, immunities and liabilities. Member Edlao seconded it. All voted in favor.

1:03 PM EXECUTIVE SESSION

1:35 PM RECONVENED

Member Edlao said this MOA will at least immediately have access to those who want it although it will be controlled he thinks it's a starting point until the bigger issue gets resolved and we can deal with that later on. Right now, we want everybody to enjoy this trail in a safe manner. Unfortunately, some people may not like having guided or be restricted some how, but again this has been something that has not been open to the public for many, many years and he thinks as we move forward you can have immediate. As the Ranch says this is just a minimum and they are open to accommodate based on demand to get as much people out there to enjoy this trail and they are open to work with some sort of organization. Member Edlao made a motion to approve this MOA between the State and the Ranch. Member Goode seconded it for discussion.

Member Pacheco said he was a little perplexed by the whole thing because from the opponents side he understands some of the language in the MOA and he may not support the motions because some amendments are needed, but he is also inclined to deny the recommendation because there are a lot of people who think it is a bad thing and we've got this case going and if the plaintiff prevails and the State doesn't own the property then they are going to be sitting there with nothing that the Ranch is not going to require to have people go across their property. If it's found the State owns the land then the access is not going to be through any kind of MOA the State will have to go through its process to open up that trail for public access, it'll take a long time – realistically years before the trail gets in the Na Ala Hele program that there are a lot of issues. Would have to make a deal with the National Park Service and will have to survey the trail and all these things. He is perplexed with the opponents trying to knock this out of the water because he thinks they are losing the leverage of us being able to have the public go across this trail. He won't support the motion because he would like to see some language changed in the MOA.

Member Edlao said he is open to amendments and was perplexed as well because here is Mr. Pierce saying they want access and here we are trying to open it up, but he is telling us no don't go with this thing. I don't understand what the logic is. He wants us to do one thing, but then he doesn't want us to do it. He is open to suggestions.

Member Goode said the reason he saved it for discussion is he had a suggestion which he touched on briefly. The language should be modified as a minimum of 2 trips per year to allow as many trips as needed to reasonably meet demand. That exact language in that general direction is something for the Chair to work out with the Ranch, but judging from the letters there are a lot of folks interested in going on this trail whether interested next year, next month he doesn't know, but he would like to see the demand met as reasonably as possible. He doesn't see the existing language in the MOA meeting that.

Member Pacheco said he liked the idea of adding that and he suggested that some kind of language to reasonably accommodate public demand. He thinks under A.1.a. give the Department and the Ranch flexibility and they decide maybe schedule a set monthly schedule or something like that and go ahead and calendar out the whole year with dates and see what happens that we don't have to add any of that. He would like to add under A.2. (of the MOA) which he read he doesn't know whether DLNR representative is an employee, a volunteer or do we just want to add another thing "or other organization entity as agreed upon by the DLNR to give them the opportunity to go into partnership with somebody to manage it for them." Member Goode said that makes sense.

Member Gon said he likes that idea and he likes that he also allowed the State and Haleakala Ranch to come to agreement over what that entity would be.

Member Pacheco said having trails that are open to the public and use is something he is a big advocate of that he does enough work on private properties where you have a public use over and in some cases you have trespass. In a perfect world that would be great, but a fact of the matter is this trail is not defined well at the start and the end parking facilities that there are a lot of open end questions that have to do with management and it is a working ranch despite claims made. He knows situations where cattle have impacted people and people have impacted cattle, gates, there are all sorts of things. Some day it would be great that this trail gets defined out and have a nice hiking trail to the crater on this historical parcel. To that right now would be premature and not good. He is willing to support this MOA with those added amendments.

Member Edlao asked on that #2 how about they put in there something to the effect "and or qualified hiking entity agreeable by both DLNR and Haleakala Ranch." Member Pacheco said he was comfortable if staff understands our intent. He was agreeable of having staff work out the language. Mr. Conry suggested "and/or DLNR representative or any third party agreeable to accompany DLNR to lead the hiking event." Member Edlao said that sounded good.

Member Edlao asked whether he had any recommendations for the demand thing. Mr. Conry said part of the challenge of what's reasonable and you could do that a couple ways by putting it out with a schedule and as that fills up you could add dates to that. It's modified to allow as many tourists to meet the demand then you get into trying to define...Member Edlao said to have you and the Ranch work it out with some wording where it's modified based on interest and/or a schedule of hiking events per year. Member Agor said he liked preset. Member Edlao agreed to work it out as a preset type thing that it depends on the demand that everything would be set and nobody shows up. Work it out and the Ranch said they were amendable to that. Mr. Conry said you would have a reservation system and set it up where you need a minimum of 3 people and call back if not enough demand. Member Edlao agreed.

Mr. Conry asked if you want to give some guidance on how frequent that minimum is or are you comfortable where they will add up the two minimum and if that fills up they add another one. Member Pacheco said he wouldn't know not knowing the trail. Member Edlao said to go as is and you guys work some kind of schedule and see how it goes and we can always modify. Mr. Conry said they would be happy to report back.

Member Goode asked will there be some kind of language in the MOA that says to somehow say try to meet demand. Saying 4 people, 8 people on each hike won't work. Mr. Conry said they could add that language to meet...Chair Aila said as reasonable demand. Member Goode said as demand as reasonably possible. Member Pacheco said if it comes down as some dispute it's up to us to look at it later. Mr. Conry agreed saying if it isn't working the Board has got the ability to. Chair Aila said MOA disputes are specific to the Board. Mr. Conry said we can decide with reasonable demand.

Member Edlao amended his motion to include the above changes. Member Goode seconded it.

Member Pacheco said he hoped the hiking community out there who testified that they really do understand at least from his perspective that this at least gives them something that if they wait either way whatever the outcome of the lawsuit its either going to mean that there will be no public access across the property or it will take a lot longer for this to kick in because if it goes through our program we have a whole big process it would have to go through to open it up in to the Na Ala Hele program.

All voted in favor of the amended motion.

The Board:

Amended the Memorandum of Agreement (MOA), page 2, item A.1. by adding and to read "...for a minimum of two (2) hiking events ("Event") each year to meet reasonable demand; provided that:" And under A.2. add "...and/or DLNR representative or other third party agreeable to Company and DLNR to lead the hiking event." Otherwise, staff's submittal was approved as submitted.

Unanimously approved as amended (Edlao, Goode)

Also, the Board members did discuss the need for more than 2 hiking events a year and under item A.1.a. the Department and the Ranch will decide on setting a monthly schedule or similar and to go ahead to calendar out the whole year with dates.

1:50 PM Chair Aila departed for another meeting and turned the gavel over to Member Agor.

Item C-3 Issuance of Management Right-of-Entry to Ahahui Malama I Ka Lokahi, Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-016:015; (1) 4-2-013:022 and 005

Member Gon recused from item C-3 since he is a Board member of the Ahahui Malama I Ka Lokahi.

Mr. Conry presented some background on item C-3 that staff has an excellent working relationship with the Ahahui and recommended the Board to approve the Management Right-of-Entry.

Unanimously approved as submitted (Edlao, Goode)

Item I-1 Request Approval to Issue an Invitation for Bids and Authorize the Chairperson to Award, Execute, and Extend Contract(s) for the Unbudgeted Purchase of Four New Midsize 4WD Sports Utility Vehicles and One New Energy Efficient Hybrid 2WD Passenger Vehicle for the State Historic Preservation Division

Randolph Lee representing State Historic Preservation Division (SHPD) conveyed item I-1 to replace several vehicles in an aging fleet and asked for the Board's approval.

Unanimously approved as submitted (Edlao, Pacheco)

Item K-1 Time Extension Request for Conservation District Use Permit (CDUP) OA-3068 for Kawainui Marsh Improvements by the Division of Forestry and Wildlife Located at Kailua, Koolaupoko, Oahu, Tax Map Key: (1) 4-2-013:005 & 022 and Plat (1) 4-2-016

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reminded the Board that they issued this in 2002 and asked for a 10 year time extension.

Member Edlao asked whether this is the first extension requested and Mr. Lemmo confirmed that.

Unanimously approved as submitted (Edlao, Gon)

Item C-7 Amendment No. 3 and Extension of Timber Land License No. 2007-H-01 Held by Hawaii Island Hardwoods, LLC.

Mr. Conry conveyed that this is to extend a timber land license with staff recommendations to change the deliverables in item table 2 on page 4 to allow more time to complete the mill facilities having experienced delays. One of staff's provisions is to extend the license, but requesting a license extension fee in the amount of \$14,385.00 and once that license is extended the company makes a minimum stumpage payment of \$6,800.00 per month. Let's say that they paid a couple months and once they do start harvesting they can use those payments for credit and won't have to pay for the stumpage or the other provision is that this will extend it for another 5 years and if they harvest in 3 years they would have paid enough over that time to cover any future stumpage payments. This meets the staff's desires to support to get a local forest products industry going and have an operation that could utilize some local woods for local demand. Staff is agreeable to working with them to get the timber they do harvest certified for local building codes and things like that. They can fill you in on their marketing plan. They did request working out some type of time or payment plan for the continued extension fee.

Member Pacheco queried whether there was anyone else was interested in this timber. Mr. Conry said it is not the portion that Tradewinds had and was returned. Staff is repackaging that license to go back out which is revising the timber management plan, EA and then repackage

that and put it back out for bid. At this point they think a saw mill is an entry type of operation that we hopefully can support. Staff put in those provisions for minimum stumpage and if some point it isn't going to be realistic for them it will drive the issue then they will come back and say they can't do this. He hopes that is the incentive to encourage them to perform.

Member Pacheco asked how your position with a payment plan is. Mr. Conry said we are amenable to that and staff will work with them on it.

Jim Quinn, managing member of the Hawaii Island Hardwoods (HIH) testified having harvested over 150,000 board feet a few years ago and named those woods. He related how tough the market is for lumber that it's difficult to compete with the mainland and internationally. They can't invest further in facilities until they prove they can get the market. His license didn't have a fee before and this is an add on which they have issues with. Mr. Quinn asked if they are going to have a license fee of \$14,000 then change the license from 2% export to 50% export because there is an international market for grandis and not locally.

Member Pacheco wondered if that change in fee would be specifically for that species or for the acreage. Mr. Quinn said it's for that species, but would like to negotiate something that they can export because it is very difficult to compete internationally. He related his involvement of forest stewardship of timber management certification of timber areas that HIH is the first company to go through chain of custody certification in Hawaii and Kamehameha Schools is the only FSC certified timber land owner, but they are having trouble getting them to harvest. They appealed to the Board and DOFAW to try to get your lands certified under the principles of the Forest Stewardship Council (FSC) which improves everyone's ability to market products out of the state.

Jim Pepps (also of HIH) testified relating how Tradewinds never got off the ground. They have spent and lost a million dollars to date actively milling, producing, marketing, creating jobs which is the difference. He believes there is a market, but they need to get to a scale which is the challenge. They need to get to \$2 to \$3 million board feet a year which will take \$4 to \$5 million to create that mill and they've invested a million dollars. If there is someone who can do this better then they are willing to step aside. One of the challenges is the critical mass isn't there using inferior equipment and no real economy of scale. They believe there is a market for one good well-run saw mill at scale which they are attempting to get to. Mr. Pepps had no issue with the extension license fee, but asked to liberate the export laws because the original intent was to keep as much work here and mill as much as possible which would better fulfill the contract.

Member Gon asked about the clause where not more than 2% of our logs shall be exported, but without written approval from the licensor and that does give the Land Board some leeway to increase that. The aim is 2%, but with the realities of the economy he would rather keep this written approval clause in, but allow for larger exports than to change the wording of this. Mr. Pepps said they are more than agreeable with that and want to be transparent and they are trying to do all they can, but it depends on the State's certification suggesting using Mr. Quinn as a great resource for the State.

Member Pacheco asked what he thinks should be the payment for the extension fee. Mr. Pepps said adding on over the year is the simple way that they have some different opportunities, but have to get it scaled and partnering with some of the bigger energy deals. They'll get their electrical rates down and capacities up. His recommendation is to advertise it and add it on to the monthly amount. It is an added cost and to liberate the export of logs would help us.

Member Pacheco asked if there were any changes coming to the Board. Mr. Conry said he would have to check the offer to negotiate that they don't want to run into problems with original RFP. Scale it to meet fee payment issues.

Member Pacheco asked they don't know now what it is. Mr. Pepps said 2% of the total is a long ways from that to be transparent.

Mr. Lau said follow what the RFP says. Staff said there is no specific percentage.

Member Pacheco asked isn't there a market for robusta. Mr. Quinn explained there is no access road to the site where robusta is and that is third in place for demand behind koa and ohia.

Member Pacheco asked what is hindering you. The logistics? Mr. Quinn said he is hesitating to get to scale, for forestry on the Big Island in the long term. It is an effort by all. It is all exotic wood.

Member Pacheco asked is anyone is bringing timber in. Mr. Pepps said a little. They are trying to get to scale and efficiency. They can be efficient with koa. Mr. Quinn said also custom sawing and drying.

Mr. Lau said you agree to staffs recommendation as long as a fee is agreeable and export is not even approved.

Member Pacheco move as amended with the amortization of the extension and approved for 1 year. Member Edlao seconded it. All voted in favor

Unanimously approved as amended (Pacheco, Edlao)

Item F-2 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Megan Donahue, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Conduct Bioerosion Study Activities

Item F-3 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Education Permit to Judith Lemus, University of Hawaii, Hawaii Institute of Marine Biology, for Access to State Waters to Document Fieldwork and Conduct Researcher Interviews

- Item F-4 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Conservation and Management Permit to Dr. Kelly Gleason, Maritime Archeologist, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Maritime Heritage Activities**
- Item F-5 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Loren Scott Godwin, NOAA Office of National Marine Sanctuaries, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Reef Assessment and Monitoring Activities**
- Item F-6 Request for Authorization and Approval to Issue a Papahānaumokuākea Marine National Monument Research Permit to Loren Scott Godwin, National Oceanic and Atmospheric Administration, Papahānaumokuākea Marine National Monument, for Access to State Waters to Conduct Invasive Species Survey Activities.**

Francis Oishi representing Division of Aquatic Resources (DAR) reminded the Board members that items F-2 to F-6 were seen by them before and are recurring.

Unanimously approved as submitted (Pacheco, Gon)

- Item F-1 Request Approval for the DLNR Chairperson to Amend an Agreement for the Exchange and Use of Confidential Fisheries Information with the National Marine Fisheries Service (NMFS) for Fisheries Management Purposes**

Mr. Oishi related some background on item F-1 that the cooperative agreement is in need of a revision and the continuation of this exchange would benefit both jurisdictions and aid in the conservation of our fishery resources.

Unanimously approved as submitted (Gon, Edlao)

- Item C-1 Request Approval for Selection of Competitive Sealed Proposal Process and Authorize the Chairperson to Award and Execute a Contract for Development of Geodatabases for the Native Ecosystems Protection and Management Section, Statewide**

Mr. Conry briefed the Board on item C-1 and Member Gon commented that he likes this.

Unanimously approved as submitted (Gon, Pacheco)

- Item C-6 Request for Final Approval to Adopt Hawaii Administrative Rules, Chapter 13-140, "Legacy Land Conservation Program Rules", for the Administration of the Legacy Land Conservation Program and Procedures and Criteria for**

the Legacy Land Conservation Commission, Including the Following Subchapters:

Subchapter 1. General Provisions – To Set Forth the Purpose of the Program, Contains a Standard Provision Relating to Severability, Defines Terms Regularly Used in the Proposed Chapter, and Delegates Authority from the Department to the Division for the Administration of the Legacy Land Conservation Program (LLCP).

Subchapter 2. Program Administration – To Establish the LLCP, Sets Forth the Administration of Grants and Planning Activities for the Program, and Clarifies the Availability of the LLCP Records for the Public.

Subchapter 3. Legacy Land Conservation Commission Practice and Procedure – To Clarify the Procedures of the Commission, Including Meeting Administration, Quorum, Communications, and Requirements Related to the Sunshine Law.

Subchapter 4. Land Acquisition Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award Requirements for Land Acquisition Grants Through the LLCP. The Subchapter Includes Provisions Relating to Deed Restrictions, Reporting Requirements, Grant Disbursement, and Other Policies Formed to Protect the State's Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 5. Criteria for Land Acquisition Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award Requirements for Land Acquisition Grants Through the LLCP. The Subchapter Includes Provisions Relating to Deed Restrictions, Reporting Requirements, Grant Disbursement, and Other Policies Formed to Protect the State's Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 6. Operations, Maintenance, and Management Grants – To Set Forth the Procedures, Eligibility Requirements, and Post-Award Requirements for Operations, Maintenance, and Management Grants Through the LLCP.

Subchapter 7. Criteria for Operations, Maintenance, and Management Grants – To Set Forth the Statutory Priorities and the Criteria That the Commission Applies in Advising the Department and the Board and Making Recommendations to the Board Regarding Land Acquisition Grants. The Subchapter Includes Provisions Relating to Grant Disbursement, Monitoring, and Other Policies Formed to Protect the State's Interests in Administering Public Funds Under Chapter 173, HRS.

Subchapter 8. Enforcement – To Describe How the Board May Act Upon Breach by an Awardee of Contractual Agreements or Deed Restrictions, and

Clarifies That Statutory Provisions and Contractual Agreements or Deed Restrictions will be Enforced by the Board.

Mr. Conry reported on item C-6 which is a request for final approval to adopt Hawaii Administrative Rules for the Legacy Land Conservation Program noting the subchapters. The Board approved to take to public hearing, it went to public hearing, there were recommendations from the commission to 2 items on page 4 – one was to define landowner in the rules and changing the obligation for – “may require” to “shall require”, but staff was not in agreement to those recommendations because they thought they would have a substantive change and is understandable as written and the may to shall doesn’t make sense since some are required and it is the discretion of the Department to utilize our resources. The AG’s office had no issues. He recommended approval.

Unanimously approved as submitted (Pacheco, Gon)

Item L-1 Certification of Election of Roy Oyama as a Director of the West Kauai Soil and Water Conservation District

Carty Chang representing Engineering Division had no changes to item L-1.

Unanimously approved as submitted (Edlao, Gon)

Item L-2 Authorization to Enter Into Agreements With the Private Property Owners of 2402 Kula Kolea Place; 2408 Kula Kolea Place & 2423 Kula Kolea Place and Declare Project Exempt From Requirements of Hawaii Revised Statutes (HRS) Chapter 343, and Hawaii Administrative Rules (HAR) Title 11, Chapter 200 for the Removal and Disposal of Boulders, Honolulu, Oahu, Hawaii

Mr. Chang asked to amend the submittal title since the agenda title was changed and wanted to conform it to the submittal title. Add to the last line “Honolulu, Oahu, Hawaii.” He related some background history regarding item L-2. The source of the boulders was from church land where the State agreed to assist the homeowners. On April 20th, we had an Emergency Board meeting to allow the Chairperson to enter into an agreement with those site owners to go on private property and the removal of the boulders was completed on April 28, 2012. There are still some boulders on the 3 private properties below and to complete the project the Department requests to enter on those private properties to remove them. He asked to delegate to the Chairperson and exempt the EA. Mr. Lin was here to answer any questions.

Member Gon asked whether he was ok with this recommendation. Mr. Lin said he is grateful.

Member Goode asked whether homeowners insurance if covering this. Mr. Lin said it is still pending and described the boulders and the air lift.

Mr. Chang clarified this is a request to remove the boulders and the damage assessment is the responsibility of the homeowner. Member Goode asked whether they will be reimbursed by

insurance. Mr. Chang said they didn't look into whether or not they will be reimbursed by insurance or insurance will just cover the structure damage.

Unanimously approved as submitted (Gon, Goode)

- Item D-1** **Issuance of Revocable Permit to Kukuipahu Ranch, LLC for Pasture Purposes; Awalu & Haena, North Kohala, Hawaii, TMK: 3rd/5-6-01:01.**
- Item D-3** **Grant of Perpetual, Non-Exclusive Easement to County of Hawaii for Sewer Line Purposes and Grant of Perpetual Easement to the Water Board of the County of Hawaii, for Water Line Purposes, Keopu-Honuaula, North Kona, Hawaii, Tax Map Key: 3rd/7-5-22:175 portion.**
- Item D-7** **Amend Prior Board Action of January 13, 2006, item D-12, by Adding Hawaiian Telecom, Inc. as an Applicant; Grant of Perpetual, Non-Exclusive Easement to Hawaiian Electric Company, Inc. for Access and Utility Purposes, Auwaiolimu, Honolulu, Oahu, Tax Map Key: (1) 2-2-003: portion of 013.**
- Item D-10** **Request to Write-Off Uncollectible Accounts on Oahu.**

Mr. Tsuji said no changes for the rest of the Land Division items.

Unanimously approved as submitted (Edlao, Goode)

- Item D-4** **Issuance of Right-of-Entry Permit to Maui's Original Hawaiian Corporate Games Inc., for a Team Building Sandcastle Sculpting Event at Wailea Beach, Honuaula, Wailea, Maui, Tax Map Key: (2) 2-1-008: seaward of 109.**

Mr. Tsuji asked to amend by changing the date from the 6th of June to the 7th of June.

The Board:

Approved as amended. At the applicant's request, the date of the event was amended or changed from the 6th to the 7th of June.

Unanimously approved as amended (Pacheco, Edlao)

- Item D-6** **Request to Extinguish an Existing Drainage Easement, Gannett Pacific Corporation; Applicant, Honolulu, Oahu, Tax Map Key: (1) 2-1-047:004.**

Mr. Tsuji asked that this item be withdrawn.

Withdrawn

**Item J-1 Sale of Concession By Sealed Bid For a Mobile Concession Located at the
Ala Wai Small Boat Harbor, Island of Oahu, Hawaii, TMK no. (1) 2-3-
037:012 (portion)**

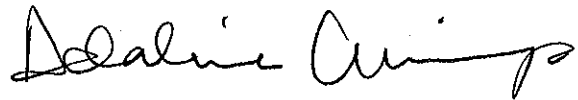
Bill Andrews representing Division of Boating and Ocean Recreation (DOBOR) said he had no changes to item J-1.

Unanimously approved as submitted (Gon, Edlao)

Adjourned

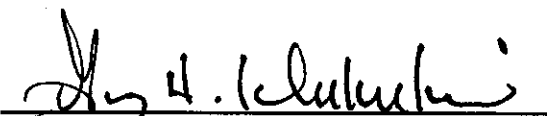
There being no further business, Member Agor adjourned the meeting at 2:34 p.m. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,



Adaline Cummings
Land Board Secretary

Approved for submittal:


For William J. Aila, Jr.
Chairperson
Department of Land and Natural Resources